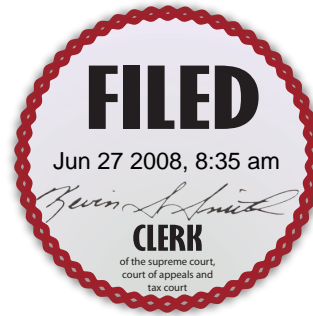


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

L. ROSS ROWLAND
Public Defender's Office
Muncie, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MATTHEW WHITMIRE
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM T. SPURLOCK,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 18A02-0803-CR-203

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable John M. Feick, Judge
Cause No. 18C04-0711-FD-204

June 27, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

William T. Spurlock appeals the revocation of his probation. We affirm.

Spurlock raises one issue, which we restate as whether he waived his right of allocution.

Spurlock was convicted of Trespass and sentenced to a one-year term of imprisonment, with eleven months suspended. One month later, the State filed a Petition for Revocation and alleged that he had subsequently committed additional criminal conduct and that he had failed to timely report his arrest to his probation officer.

The trial court conducted an evidentiary hearing on the alleged probation violation. After the close of the evidence, the trial court asked Spurlock's attorney for comment. Defense counsel acknowledged that Spurlock drank alcohol and that doing so constituted a probation violation. He then stated, "we will leave it to the discretion of the Court as to what you think should be done in the context of what you've heard here and based on what he pled guilty to." Transcript at 25.

Immediately after announcing that it found Spurlock to have violated his probation, the trial court ordered Spurlock to execute his previously-suspended sentence. At no time did Spurlock request the opportunity to speak. Spurlock now appeals.

Discussion and Decision

Spurlock argues that the trial court violated his Due Process right of allocution by not affirmatively offering Spurlock the opportunity to do so. While the right of allocution extends to probation revocation hearings, the trial court need not ask the defendant whether he wants to make a statement. Vicory v. State, 802 N.E.2d 426, 429 (Ind. 2004).

Because the court does not “pronounce a sentence” at a probation revocation hearing, the judge is not required to ask the defendant whether he wants to make a statement, as provided by Indiana Code Section 35-38-1-5. But when the situation presents itself in which the defendant specifically requests the court to make a statement . . . the request should be granted.

Id. See also Hull v. State, 868 N.E.2d 901, 903 (Ind. Ct. App. 2007) (holding that the defendant waived his right of allocution by neither asking to speak nor objecting to the lack of opportunity to speak), trans. denied. Here, Spurlock did not object or request the opportunity to speak. He therefore waived his right of allocution.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.